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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/598,464	08/31/2006	Stanley George Bonney	PB60781USw	5790
23347	7590	03/01/2010	EXAMINER	
GLAXOSMITHKLINE CORPORATE INTELLECTUAL PROPERTY, MAI B482 FIVE MOORE DR., PO BOX 13398 RESEARCH TRIANGLE PARK, NC 27709-3398			CAMPBELL, VICTORIA P	
			ART UNIT	PAPER NUMBER
			3763	
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			03/01/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/598,464	Applicant(s) BONNEY ET AL.	
	Examiner VICTORIA P. CAMPBELL	Art Unit 3763	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 November 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 and 42-47 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-36 and 42-47 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>11/3/09</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This is the second Office Action based on the 10/598464 application filed August 31, 2006. Claims 1-36 and 42-47 as amended November 3, 2009 are currently pending and considered below.

Priority

1. Receipt is acknowledged of papers filed under 35 U.S.C. 119 (a)-(d) based on an application filed in Great Britain on March 11, 2004. Applicant has not complied with the requirements of 37 CFR 1.63(c), since the oath, declaration or application data sheet does not acknowledge the filing of any foreign application. A new oath, declaration or application data sheet is required in the body of which the present application should be identified by application number and filing date.
2. The examiner notes that in the prior office action, priority was mistakenly indicated as completed. As such, this office action is non-final.

Information Disclosure Statement

3. The information disclosure statement (IDS) submitted on November 3, 2009 was filed after the mailing date of the Non-Final Office Action on August 6, 2009. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

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Specification

4. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1, 3, 6, 8, 10, 11, 13, 15-36, and 42-47 are rejected under 35 U.S.C. 102(e) as being anticipated by USPGPub 2007/0095853 A1 to Bonney et al.

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) **might** be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the

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inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Regarding claims 1, 3, 6, 8, 10, 11, 13, and 15-29, Bonney et al disclose a fluid dispensing device having: a dispensing outlet (27), a supply of fluid product (2), a dispensing member (56) mounted for movement in a dispensing direction along an axis, and a finger-operable actuator (101) mounted for movement in an actuating direction which is generally transverse to the axis (F), wherein the actuator member has at least one cam surface (129a, 129b) and the dispensing member has at least one cam follower surface (135a, 135b), wherein the actuator is movable in the actuating direction (F) to cause the at least one cam surface to bear against the at least one cam follower surface to cam this dispensing member from a first position to a second position (Figs. 2A-2I), wherein the at least one cam surface has a commitment section at a first angle to the axis and an adjacent drive section at a second angle to the axis which is greater than the first angle (see figure reproduced below), wherein the device is configured such that the at least one cam follower surface successively rides over the commitment and drive sections (Figs. 2A-2I).

Furthermore, Bonney et al disclose that the commitment section is planar (each small portion of curvature is a plane), that the drive section has an arcuate transition portion contiguous with the commitment section, or is arcuate itself (Fig. 2A'), and that the commitment section is of a first length and the drive section is of a greater second length. Bonney et al also disclose that the at least one cam follower surface is arcuate (Fig. 2A'), that the actuator member is

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mounted in the device for movement on an arcuate path in the actuating direction (pivots about P1), that the first angle to the axis becomes steeper as the actuator member moves in the actuating direction, and that the second angle remains substantially constant as the actuator member moves in the actuating direction.

Bonney et al further disclose that the actuator member is mounted for pivotal movement about a first end (105) and the at least one cam surface is remote from the first end, wherein the dispensing direction is an upward direction and the first end of the actuator is at a lower end thereof and the cam follower is disposed toward an upper end of the dispensing member (Fig. 2F). Further, Bonney et al disclose that the dispensing member is a dispensing container in which the supply of fluid product is contained (56, 2; Fig. 2A) and that the dispensing container has a pump (upper portion between the reservoir and the nozzle) and that the actuator member is the sole actuator (Fig. 1).

Additionally, Bonney et al disclose that the dispensing outlet is a nozzle sized and shaped for insertion into a nostril of a human or animal body (Paragraph [0065]) and that the fluid product is a medicament (Paragraph [0003]). Further, Bonney et al disclose that the dispensing member and housing have cooperating guide members for guiding movement of the dispensing member along the axis wherein the members prevent rotation of the dispensing member and comprise a runner and a track (inside of nozzle and outside of the pump portion of the dispensing unit).

Regarding claims 30-36, Bonney et al disclose a fluid dispensing device having: a dispensing outlet (27), a supply of fluid product (2), a dispensing

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member (56) mounted for movement in a dispensing direction along an axis, a finger-operable actuator (101) mounted for movement in an actuating direction (F) which is generally transverse to the axis, wherein the actuator member has at least one cam surface (129a, 129b) and the dispensing member has at least one cam follower surface (135a, 135b), wherein the actuator member is movable in the actuating direction (F) to cause the at least one cam surface to bear against the at least one cam follower surface to cam this dispensing member in the dispensing direction (Figs. 2A-2I), and wherein the actuator member further has a stop to stop the dispensing member being movable along the axis in a direction opposite the dispensing direction beyond a predetermined axial position to provide alignment of the at least one cam surface and the at least one cam follower surface (133a, 133b). Bonney et al further disclose that the stop comprises at least one stop surface engagable with a respective surface of the dispensing member (Fig. 2I), wherein the at least one stop surface extends generally transversely to the axis (Fig. 2I), wherein the at least one stop surface forms a continuation of the at least one cam surface (all a part of the drive system 109), wherein the at least one surface of the dispensing member forms a continuation of the at least one cam follower surface (135a, 135b), and wherein the at least one cam surface is provided by a nose of the actuator member (109) and the at least one stop surface is a tip portion of the nose section (Fig. 2I).

Regarding claims 42-47, Bonney et al disclose a fluid dispenser having a nozzle sized and shaped for insertion into a nostril (19, Paragraph [0063]), and a housing (3) in which the fluid product is containable, wherein the housing has an

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opening in which the nozzle is received (15) and a fastening mechanism which fastens the nozzle in the opening (lower and upper ridges (see Fig. 1). Bonney et al further disclose that the housing houses a dispensing container (56) having the fluid product (2) wherein the nozzle has an outlet passageway (27) and the dispensing member (pump portion) and outlet are in direct fluid communication and engaged (Fig. 2A). Bonney et al also disclose that the fastening mechanism has a clamp member which clamps the nozzle in the opening (housing half) wherein the nozzle has a flange (lower rim, see Fig. 1) abutting an inner surface of the housing (15), wherein the claim member fastens the flange to the inner surface and the clamp member is a collar structure (upper and lower rings) being bent or folded over the flange (in formation) to claim the flange to the inner surface (Fig. 2A).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

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2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

10. Claims 2, 4, 5, 7, 9, 10, 12, and 14 rejected under 35 U.S.C. 103(a) as being unpatentable over Bonney et al.

Regarding the above claims, Bonney et al disclose the device of claims 1 and 8 as described above, but fail to teach or disclose specific values for the actuating force, first or second angles, or radius of curvature. At the time of invention, however, it would have been obvious to one having ordinary skill to choose the particular claimed values, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

Response to Arguments

11. Applicant's arguments filed November 3, 2009 have been fully considered but they are not persuasive. As indicated above, the applicant has not fulfilled all requirements of 35 U.S.C. 119 (a)-(d) and as such, Bonney et al is still considered to be Prior Art in the case.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VICTORIA P. CAMPBELL whose telephone number is (571)270-5035. The examiner can normally be reached on Monday-Thursday, 7-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 571-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Victoria P Campbell
Examiner, AU 3763

/Nicholas D Lucchesi/
Supervisory Patent Examiner, Art Unit 3763